

SOUTH AFRICA / JUDGMENT

MEC for Education Mpumalanga v Kotze (17290/2013) [2017] ZAGPPHC 504 (21 August 2017) [2017] ZAGPPHC 504

COURT

North Gauteng High Court, Pretoria

BEFORE

Millar

CASE / FILE NUMBER

17290/2013

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION PRETORIA DIVISION

Case

No. 17290/2013

Date: 21/8/2017
Inthe matter between: MEC
FOR EDUCATION MPUMALANGA
APPLICANT/PLAINTIFF
and
WJPKOTZE
RESPONDENT/DEFENDANT**JUDGMENT**

MILLAR, AJ

1. This is an application where an order is sought condoning the Applicant's non-compliance with an order of this court granted on 17 June 2013 and for leave to deliver amended particulars of claim.

2. Although the pleadings in this matter have not yet closed, the parties have variously approached this court on no less than 4 prior occasions over the last 4 years with applications of one sort or another.
3. It is unnecessary to traverse the prior applications in any detail. It suffices to state that the present application was brought as a result of the Applicant's failure to adhere to the time limits set by this court on 17 June 2013 when it granted an order, upholding an exception and afforded the Applicant 15 days to deliver an amendment to its particulars of claim.
4. It is common cause that the applicant did not do so within the prescribed time and that when it did try to effect an amendment, the respondent objected. An application for leave to serve the amended particulars was removed from the roll on 25 August 2015 as there was no application for condonation before it.
5. This is a case that has generated more of the proverbial heat than light.
6. The Applicant's case in essence is that its attorney erred in calculating the applicable time periods for various

reasons.

The delay in serving the amended particulars in July 2013 and subsequently, is laid squarely at the door of the attorney. The attorney for her part deposed to the founding affidavit in this application and accepted responsibility.[1]

7. The respondent for his part has raised a number of challenges to the application - besides the condonation. These were set out in paragraph 16 of the Answering affidavit and I propose dealing with each of these in turn.
8. Firstly, the respondent contended that the application for leave to file the amended pages had been dismissed by Legodi J.[2]
9. Secondly, that there was no "attempt to amend before the court",
10. Thirdly, that the Applicant had not filed an application for an amendment and/or given notice of intention to amend,
11. Fourthly, that the applicant had not yet delivered amended particulars; and
12. Lastly, that the amendment in respect of which the application had been brought had not been delivered.
13. The first challenge is without merit - the order of the court granted on 25 August 2015 clearly states that the application to amend was struck from the roll. It was not dismissed.[3]
14. The remaining four challenges are similarly in my view without merit. The applicant gave notice of intention to amend the particulars that had been struck out and the respondent objected thereto.

15. The remaining challenges seek to place form over substance. The applicant cannot comply with the order of 17 June 2013 in any other way other than by an amendment. The respondent has had sight of the proposed amendment.[4]
16. The respondent disputes that the applicant has made out a case for the granting of condonation. He cites three grounds which he says are not addressed in the application and which render it "fatally defective" [5].
17. The first of these grounds is that the applicant has not addressed the prospects of success with regard to the proposed amendment.

Secondly prejudice and thirdly the absence of a proper explanation for the delay.

18. I am of the view that it is not necessary to address the prospects of success in an application such as the present one. The respondent succeeded in having the particulars of claim that were served with the summons struck out. The court has already granted leave to deliver amended particulars and in the circumstances this point is moot. In any event it is clear that the applicant intends to pursue the matter and has a case for the respondent to answer.
19. In regard to prejudice, while the applicant has not dealt with this at all, it seems to me having regard to all the facts of this matter (and in particular that the summons stands and pleadings have not closed) that there can be no prejudice that cannot be cured by the granting of an appropriate costs order.
20. The third ground is where the Applicant has difficulty. I agree with the respondent that the explanation preferred by the Applicant's

attorney is less than satisfactory. To simply say mea culpa without anything more, is of no assistance to the court. The attorney admits to an incorrect understanding of the application of the time periods in the rules but goes no further than that.

21. There is no proper explanation for the periods of delay beyond this. Furthermore, the applicant seems to have relied entirely on its attorney who deposed to the affidavit in this matter on its behalf. The attorney is entitled to have deposed to this affidavit as all the facts set out therein were indeed within her personal knowledge. The applicant having placed its reliance on its attorney must bear the consequences of its attorney's actions. Having said that I cannot find that there has been a reckless or intentional disregard of the rules.
22. Notwithstanding the woefully inadequate explanation for the delay, I am nonetheless mindful of the fact that besides the delay, consideration must also be given to whether the granting of condonation would be in the interests of justice.[6]
23. In the circumstances, I make the following order:

23.1 The applicant's non-compliance with the time periods set out in the order of this court of 17 June 2013 is condoned.

23.2 The applicant is granted leave to deliver amended particulars of claim, which delivery is to be effected by no later than 5 September 2017.

23.3 The applicant is ordered to pay the costs of this application on the scale as between attorney and client.

A MILLAR

ACTING JUDGE OF THE HIGH COURT

- [1] Founding Affidavit paragraph 16 pages 9 and 10
- [2] Answering Affidavit paragraph 16 .2 page 36
- [3] Annexure "C" page 29 paragraph 22.1
- [4] Annexure "A" pages 14 to 19
- [5] Paragraph 18.2 on page 37ff
- [6] see BERTIE VANZYL (PTY) LTD and ANOTHER v MINISTER for SAFETY and SECURITY and Others 2010 (2) SA 181 CC and FERRIS v FIRSTRAND BANK 2014 (3) SA 39 AT PARAGRAPH 10.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2017/504.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mec-for-education-mpumalanga-v-kotze-unknown-topic-agpphc-2017>

Prepared on 11 October 2026 · Esheria